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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 TRUSTEES OF THE CONSTRUCTION
14 INDUSTRY AND LABORERS HEALTH
15 AND WELFARE TRUST; TRUSTEES OF
16 THE CONSTRUCTION INDUSTRY AND
17 LABORERS JOINT PENSION TRUST;
18 TRUSTEES OF THE CONSTRUCTION
19 INDUSTRY AND LABORERS VACATION
20 TRUST; AND TRUSTEES OF THE
21 SOUTHERN NEVADA LABORERS
22 LOCAL 872 TRAINING TRUST,

23 Case No. 2:09-cv-01897-RCJ-RJJ

24 **REQUEST FOR RECONSIDERATION
25 OF PLAINTIFFS' MOTION FOR
26 GARNIShee JUDGMENT AGAINST
27 ROSENDIN ELECTRIC, INC.**

28 Plaintiffs,

vs.

JR CONCRETE CUTTING, INC., a Nevada
corporation; and EDITH RICHELLE
HERRERA, an individual,

Defendants.

Plaintiffs, Trustees of the Construction Industry and Laborers Health and Welfare Trust, Trustees of the Construction Industry and Laborers Joint Pension Trust, Trustees of the Construction Industry and Laborers Vacation Trust, and Trustees of the Southern Nevada Laborers Local 872 Training Trust (collectively "Trust Funds") respectfully request that the Court reconsider its Order dated September 12, 2012, denying Plaintiffs' Motion for Garnishee Judgment (ECF No. 28) against Rosendin Electric, Inc., a California corporation registered to do

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1 business in Nevada (“Rosendin”) and in favor of JR Concrete Cutting, Inc. a Nevada corporation
 2 and Edith Richelle Herrera, an individual (“JR”) for use by the Trust Funds. The Trust Funds
 3 followed proper procedure for obtaining a writ of *execution after a plaintiff has a judgment* in
 4 place. As illustrated below, the *attachment* rules cited by the Court are not at issue in this case,
 5 where the Trust Funds already have a judgment.

6 **A. The Trust Funds' obtained a proper writ of execution after entry of judgment
 7 against JR.**

8 On January 6, 2010, JR confessed judgment in favor of the Trust Funds in the amount of
 9 \$87,917. (ECF No. 5.) The Court Clerk issued a routine postjudgment writ of execution on March
 10 1, 2011, setting forth \$56,750 as the amount remaining due. (ECF No. 14.) The Trust Funds were
 11 not required to apply to the Court for the writ of execution, pursuant to Nevada Revised Statute
 12 31.450, which states such a writ may be issued “without application to the court.”

13 The Trust Funds provided to the U.S. Marshall various copies of the writ of execution,
 14 writ of garnishment for service, garnishee payment, and various other items for service upon
 15 Rosendin, and the Marshall served such items upon Rosendin’s agent on May 31, 2012 . (ECF
 16 No. 28-1, at 10-37).

17 **B. Rosendin failed to respond to the writ of garnishment, subjecting it to
 18 immediate entry of a garnishee judgment.**

19 Rosendin, as garnishee, failed to respond to the Trust Funds’ garnishment, and therefore
 20 the Trust Funds are entitled to a judgment for the amount garnished. Nevada Revised Statute §
 21 31.320(1) states:

- 22 1. If the garnishee has been duly served with the writ of garnishment and
 23 interrogatories, and been paid or tendered the fee of \$5, and the fact of the
 24 payment or tender is duly certified by the officer who served the writ over
 25 the officer’s official signature, or that fact is made to appear by the person
 26 serving the writ under oath, but the garnishee fails, neglects or refuses to
 27 answer the interrogatories within the time required, the court shall, upon
 28 application therefore by the plaintiff with at least 5 days’ notice of the
 hearing upon the application given to each defendant who has appeared in
 the action, enter judgment in favor of the defendant for the use of the
 plaintiff against the garnishee for:

1 (a) The value of the property or amount of money specified in the writ
 2 of garnishment; or

3 (b) If the garnishment is pursuant to NRS 31.291, the amount of the
 4 lien created pursuant to that section.

5 In addition to failing to respond to the Writ of Garnishment, Rosendin failed to respond to
 6 the Motion for Garnishee Judgment. Thus, the Court should enter a Garnishee Judgment against
 7 Rosendin as requested in the Trust Funds' Motion.

8 **C. The Trust Funds have never sought, and are not seeking now, a prejudgment
 9 writ of garnishment *in aid of attachment*.**

10 In denying the Trust Funds' Motion for Garnishee Judgment, the Court relied on
 11 procedures applicable to prejudgment writs of attachment in error. Specifically, in its September
 12 12, 2012, Order denying the Trust Funds' Motion for Garnishee Judgment (ECF No. 30), the
 13 Court cites Nevada Revised Statute 31.249(1) (2012), which states that "No writ of garnishment
 14 *in aid of attachment* may issue except on order of the court . . ." (Emphasis added.) That section
 15 must be read in context of its companion statute, Nevada Revised Statute 31.240, and pertains to
 16 situations where a plaintiff does not yet have a judgment in place. The Trust Funds are not
 17 seeking aid of attachment. The purpose of such a provisional writ of attachment governed by
 18 Nevada Revised Statutes 31.240 and 249 is to seize property so that there will be property from
 19 which the plaintiff may recover to satisfy *a potential judgment if the plaintiff ultimately prevails*.
 20 See NRS 31.240 (pertaining to property of the defendant or any third person "to be attached as
 21 security for any judgment the plaintiff *may recover* in the action against the defendant" (emphasis
 22 added).
 23 The Trust Funds request that the Court instead consider Nevada Revised Statute 31.450,
 24 which governs the issuance of writs of attachment *after* judgment. That section explains, in
 25 pertinent part, that

26 Any person *having a judgment remaining unsatisfied* in any court of record in the
 27 State, upon which execution has been issued and delivered, and which remains in
 28 the hands of the proper officer uncollected and unsatisfied, may, *without
 application to the court*, have a writ of garnishment issued, and thereupon attach
 the credits, effects, debts, choses in action and other personal property of the
 judgment debtor in the possession or under the control of any third person as

1 garnishee, for the security of such judgment . . . and all courts shall be liberal in
2 allowing amendments, and in construing this chapter so as to promote the objects
thereof.

3 Pursuant to Nevada Revised Statute 31.450, no application to the court is necessary prior
4 to having a writ of garnishment issued if a judgment already exists.

5 The Trust Funds did not seek a prejudgment writ of attachment against Rosendin. The
6 Trust Funds writ of garnishment is based on an existing judgment and thus no application to or an
7 order from the Court was required. A garnishee judgment is not a prejudgment writ of attachment
8 and the procedures for prejudgment writ of attachment do not apply in situations such as this one
9 when a judgment is already in place.

10 For the foregoing reasons, the Trust Funds respectfully request that the Court reconsider
11 its denial of the Trust Funds' Motion for Garnishee Judgment against Rosendin and in favor of
12 JR. As Rosendin failed to respond to the Motion for Garnishee Judgment against it, no oral
13 argument is necessary, and the Court should enter a Garnishee Judgment against Rosendin as
14 requested in the Trust Funds Motion (ECF No. 28).

15 Dated: September 21, 2012.

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP and that on this 21st day of September, 2012, I served a true copy of the foregoing **REQUEST FOR RECONSIDERATION OF PLAINTIFFS' MOTION FOR GARNISHEE JUDGMENT AGAINST ROSENDIN ELECTRIC, INC.** upon:

Rosendin Electric, Inc.
311 S. Division Street
Carson City, Nevada 89703

- a. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada.

b. **BY CM/ECF SYSTEM**

NO PARTIES ENTERED

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Ebony Davis
An employee of Brownstein Hyatt Farber Schreck, LLP